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ACTION EB-08

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E.O. 12356: DECL:OADR

TAGS: EPET, EINV, OPIC, PREL, KALR, CO

SUBJECT: AMBASSADOR MEETS WITH SHELL EXECUTIVES ON
DECREES 122 AND 196

REFS: BOGOTA 1243 AND PREVIOUS

1. CONFIDENTIAL ENTIRE TEXT.

2. SUMMARY: SENIOR SHELL EXECUTIVES ARE DISPOSED TO
PETITION COUNCIL OF STATE TO SUSPEND DECREES ON
OPERATIONAL CONTROL OF PIPELINE AND OIL EXPORTS. WE
WILL CONTINUE LOW-KEY APPROACHES TO SENIOR GOC OFFICIALS
UNLESS COUNCIL DECIDES TO REJECT PETITION. ACTION
OUTLINE IN PARAGRAPH 9. END SUMMARY

3. AT SHELL'S INVITATION, AMBASSADOR AND ECON COURSE OR
MET JANUARY 30 WITH [REDACTED]

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[REDACTED] AND TWO OTHER SHELL EXECUTIVES.

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4. [REDACTED] VISIT WAS PLANNED BEFORE THE TWO DECREES

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(SEE REFTELS) WERE ISSUED, BUT IT IS CLEAR THE PROBLEM OF ECOPETROL OPERATION OF THE CANO LIMON-COVENAS PIPELINE AND CONTROL OVER EXPORTS NOW HAS HIS FULL ATTENTION. THE SHELL TEAM HAD MEETINGS EARLIER WITH UK AND DUTCH AMBASSADORS, AND TEAM WAS SCHEDULED TO MEET WITH ENERGY MINISTER DUQUE AFTER US.

5. [REDACTED] SAID HE IS WORRIED ABOUT A STRING OF RECENT GOC ACTIONS: DECREES PLUS CHANGES IN TAXATION AND DEPRECIATION ALLOWANCES (SEPTEL). HE IS NOT SURE WHETHER ALL OF THESE, TAKEN TOGETHER, CONSTITUTE A FUNDAMENTAL CHANGE IN GOC POLICY TOWARD FOREIGN OIL COMPANIES OR IF IT IS JUST COINCIDENCE. THE AMBASSADOR SAID THAT GOC DECREES MAY HAVE BEEN MINISTER DUQUE'S AND PRESIDENT BETANCUR'S WAY TO SHUT OFF DOMESTIC POLITICAL CRITICISM, WHICH WAS GETTING HEAVY IN DECEMBER, OF THE GOC'S DEALINGS WITH OCCIDENTAL/SHELL. ALSO, THE FACT THAT OIL IS NOW FLOWING OUT OF THE CANO LIMON FIELD AND OIL PRICE IS NOW A HEADLINE ISSUE IS BOUND TO FOCUS COLOMBIAN ATTENTION ON PETROLEUM MATTERS.

6. THE SHELL EXECUTIVES THINK DEGREE 196 IS THE MORE IMPORTANT OF THE TWO. THEY SEE POSSIBILITY OF ECOPETROL FIXING A DOMESTIC PRICE WELL BELOW THE WORLD MARKET, THEN EXERCISING THE FIRST REFUSAL POWER TO BUY ALL OIL

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FOR EXPORT AND RESELL IT FOR A CONSIDERABLE PROFIT. THIS WAS NOT WHAT SHELL HAD IN MIND WHEN THEY PAID A BILLION DOLLARS FOR HALF OF OXY'S 50 PERCENT SHARE (I.E., 25 PERCENT OF THE TOTAL).

7. IN DISCUSSING POSSIBLE NEXT STEPS, IT WAS AGREED THAT IT IS UNLIKELY THAT MINISTER DUQUE AND THE GOC WILL RESCIND THEM. THE MINISTER INSISTS THE DECREES ARE LEGAL AND HAS TOLD THE OIL COMPANIES TO TAKE LEGAL ACTION IF THEY WISH. SHELL OFFICIALS SEEM DISPOSED TO CONCUR IN OXY'S PLAN TO PETITION THE COUNCIL OF STATE TO

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SUSPEND THE DECREES AND FORMALLY REVIEW THEIR LEGALITY. IN THE MEANTIME, THEY WILL CONSIDER RAISING THE PROBLEM WITH THE PRESIDENTIAL CANDIDATES, FORMER PRESIDENTS AND OTHERS TO HEIGHTEN SENSITIVITY TO THE ADVERSE IMPACT THE DECREES COULD HAVE ON PETROLEUM INVESTMENT AND COLOMBIA'S ECONOMIC FUTURE. THEY WILL NOT, HOWEVER, GO TO THE PRESS IN ORDER TO AVOID STIRRING NATIONALIST OPPOSITION LIKE THAT HEARD IN DECEMBER.

8. COMMENT: OCCIDENTAL AND SHELL ARE PROBABLY ON THE RIGHT TRACK IN MOVING TO THE COUNCIL OF STATE. THERE IS A RISK THAT LEGAL ACTION COULD DRAW PUBLIC ATTENTION, AND DURING A PRESIDENTIAL CAMPAIGN IT MIGHT BE TURNED INTO A POLITICAL FOOTBALL. BUT DUQUE'S RESPONSE TO THE COMPANIES INDICATES THAT JAMBONING IS NOT LIKELY TO GET ANYWHERE AND THE ONLY PRACTICAL ALTERNATIVE WOULD BE TO DO NOTHING. IF THE COUNCIL OF STATE WERE TO DECIDE NOT TO ACCEPT THE OXY/SHELL PETITION FOR REVIEW, OR CONFIRM THE DECREES, WE COULD HAVE A SERIOUS PROBLEM. AS FOR THE COUNCIL, THREE DIFFERENT LAW FIRMS HAVE TOLD OXY THAT THE DECREES ARE ILLEGAL, AND GIVEN COUNCIL'S INDEPENDENCE IN TURNING DOWN THE GOC'S REQUEST FOR EMERGENCY POWERS TO HANDLE THE COFFEE BONANZA, OXY/SHELL

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WOULD LIKELY GET A FAIR HEARING. WHAT THE OUTCOME WOULD
BE IS ANYONE'S GUESS, OF COURSE.

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